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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2011-0094]

Privacy Act of 1974; Department of Homeland Security/ALL – 017 General Legal Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a Department-wide system of records notice titled, “Department of Homeland Security/ALL – 017 General Legal Records System of Records.” This system will assist attorneys in providing legal advice to the Department of Homeland Security on a wide variety of legal issues. As a result of the biennial review of this system, updates have been made to the routine uses within this notice and other administrative non-substantive changes. The subsections of the exemptions have been updated for accuracy and a new Notice of Proposed Rulemaking has been published. Until a new Final Rule is published, the Final Rule published on October 1, 2009 remains active and in place. This system will continue to be included in the Department of Homeland Security’s inventory of record systems.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The new system of records will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2011-0094 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 1-866-466-5370.
- Mail: Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.
- Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a Department-wide system of records notice titled, “DHS/ALL – 017 General Legal Records System of Records.” This system will assist attorneys in providing legal advice to DHS on a wide variety of legal issues.

As a result of the biennial review of this system, updates have been made to the routine uses within this notice and other administrative non-substantive changes. It also

reflects that in some cases, the records in the system will be classified. The subsections of the exemptions have also been updated for accuracy and a new Notice of Proposed Rulemaking (NPRM) has been published. Until a new Final Rule is published, the Final Rule published on October 1, 2009 remains active and in place. Additions were made to the routine uses to include sharing with federal, state, local, tribal, territorial, foreign, or international agency, regarding individuals who pose or are suspected of posing a risk to transportation or national security; to former employees to respond to government agencies or licensing authorities or for personnel matters; to the Department of Justice, United States Attorney's Office, or other federal agencies to collect debt; to the Department of Transportation for certain purposes; and to third-parties regarding their employees, applicants, contractors, and individuals to whom the third-party issues credentials or clearance to secured areas.

The purpose of this system is to assist DHS attorneys in providing legal advice to DHS personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the plaintiff(s) and defendant(s) response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent DHS during litigation, and to maintain internal statistics. DHS is authorized to implement this program primarily through 5 U.S.C. § 301; The Federal Records Act, 44 U.S.C. § 3101; The Homeland Security Act of 2002, Public Law 107-296; and The Aviation and Transportation Security Act, Public Law 107-71. This system has an affect on individual privacy that is balanced by the need to collect and maintain information related to legal advice issued. Routine uses contained in this notice include

sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; to an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order; to a court, magistrate, or administrative tribunal for hearings; to third parties during the course of an investigation; to a federal, state, local, tribal, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual; to international and foreign governmental entities in accordance with law and formal or informal international agreement; to State Bar Grievance Committees and local Attorney General offices for disbarment or disciplinary proceedings; to unions recognized as exclusive bargaining representatives; To a former employee of HDS, in accordance with applicable regulations; to the DOJ, United States Attorney's Office, or other federal agencies for further collection action on any delinquent debt; and to the news media in the interest of the public. This system will remain in constant review to ensure that if information is collected from the public that the practice is done so in compliance with Paperwork Reduction Act (PRA).

This system will continue to be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires that each agency publish in the Federal Register a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the General Legal Records System of Records.

In accordance with 5 U.S.C. § 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

System of Records:

Department of Homeland Security (DHS)/ALL – 017

System name:

DHS/ALL – 017 General Legal Records System of Records

Security classification:

Classified and Unclassified.

System location:

Records are maintained at DHS and component locations in Washington, D.C. and field offices.

Categories of individuals covered by the system:

Categories of individuals covered by this system include DHS employees and former employees, other federal agency employees and former employees, members of the public, individuals involved in litigation with DHS or involving DHS, individuals who either file administrative complaints with DHS or are the subjects of administrative complaints initiated by DHS, individuals who are named parties in cases in which DHS believes it will or may become involved, matters within the jurisdiction of the Department either as plaintiffs or as defendants in both civil and criminal matters, witnesses, and to the extent not covered by any other system, tort and property claimants who have filed claims against the Government and individuals who are subject of an action requiring approval or action by a DHS official, such as appeals, actions, training, awards, foreign travel, promotions, selections, grievances and delegations, OGC attorneys to whom cases are assigned, and attorneys and authorized representatives for whom DHS has received complaints regarding their practices before DHS and/or the Executive Office for Immigration Review (EOIR).

Categories of records in the system:

Categories of records in this system include:

- Names of individuals involved in each legal case;
- Names of witnesses;
- Records relating to litigation by or against the U.S. Government (or litigation in which the U.S. Government is not a party, but has an interest) resulting from questions concerning DHS cases and legal actions that the Department either is involved in or in which it believes it will or may become involved;
- Claims by or against the Government, other than litigation cases, arising from a transaction with DHS, and documents related thereto, including demographic information, vouchers, witness statements, legal decisions, and related material pertaining to such claims;
- Investigation reports;
- Legal authority;
- Legal opinions and memoranda;
- Criminal actions;
- Criminal conviction records;
- Claims and records regarding discrimination, including employment and sex discrimination;
- Claims and records regarding the Rehabilitation Act;
- Claims against non-DHS attorneys and/or representatives who engage in unethical activities or exhibit unprofessional behavior;

- Copies of petitions filed with DHS;
- Personnel matters;
- Contracts;
- Foreclosures;
- Actions against DHS officials;
- Titles to real property;
- Records relating to requests for DHS records other than requests under the Freedom of Information Act and the Privacy Act of 1974;
- Testimonies of DHS employees in federal, state, local, or administrative criminal or civil litigation;
- Documentary evidence;
- Supporting documents including the legal and programmatic issues of the case, correspondence, legal opinions and memoranda and related records;
- State Bar grievance/discipline proceedings records;
- Security Clearance Information
- Records concerning requests for information regarding the use of reproductions of obligations of the United States, including bonds, checks, coins, coupons, currencies (U.S. and foreign), fractional notes, postage stamps (U.S. and foreign), postal money orders, and postmarks;
- Any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any

other court filing or administrative filing or evidence;

- Employee and former employee ethics question forms and responses;
- and
- Court transcripts.

Authority for maintenance of the system:

5 U.S.C. § 301; The Federal Records Act, 44 U.S.C. § 3101; The Homeland Security Act of 2002, Public Law 107-296; The Aviation and Transportation Security Act, Public Law 107-71.

Purpose(s):

The purpose of this system is to assist DHS attorneys in providing legal advice to DHS personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the plaintiff(s) and defendant(s) response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent DHS during litigation, and to maintain internal statistics.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency or federal executive office conducting litigation or in anticipation of

litigation before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee or former employee of DHS in his/her individual capacity

where the Department of Justice or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil

discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

I. To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

J. To a federal, state, local, tribal, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, or if necessary to obtain information relevant to a DHS decision concerning the hiring or retention of an individual, the issuance of a security clearance, license, contract, grant, or other benefit.

K. To international and foreign governmental entities in accordance with law and formal or informal international agreement.

L. To State Bar Grievance Committees and local Attorney General offices for disbarment or disciplinary proceedings.

M. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. §§ 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

N. To the appropriate federal, state, local, tribal, territorial, foreign, or international agency, regarding individuals who pose or are suspected of posing a risk to transportation or national security.

O. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel – related or other official purposes where the Department requires information or consultation assistances from the former employee regarding a matter within that person’s former area of responsibility.

P. To the DOJ, United States Attorney’s Office, or other federal agencies for further collection action on any delinquent debt when circumstances warrant, as well as to a debt collection agency for the purpose of debt collection.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS’s officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

R. To the Department of Transportation and its operating administrations when necessary or relevant to (1) ensure safety and security in any mode of transportation, (2) enforce DHS regulations or requirements, or (3) the issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

S. To third parties about individuals who are their employees, job applicants, contractors, or any other individual who is issued credentials or granted clearances by the third party to secured areas when relevant to such employment, application, contract, or issuance of the credential or clearance.

Disclosure to consumer reporting agencies:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. § 552a(b)(12) collecting on behalf of the United States Government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored electronically or on paper in secure facilities behind a locked door. The electronic records are stored on magnetic disc, tape, digital media, CD-ROM, and computer.

Retrievability:

Data may be retrieved by individual's name.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Retention and disposal:

For DHS Headquarters, records are kept for 10 years, in accordance with National Archives and Records Administration General Records Schedule [schedule in process.]

For components of DHS, retention may vary. Please contact the component system manager.

System Manager and address:

The System Managers are the respective General Counsel/Chief Counsel for DHS and each of its components. Their addresses will vary according to each component.

Notification procedure:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, S.W., Building 410, STOP-0665, Washington, D.C. 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that

you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See “Notification procedure” above.

Contesting record procedures:

See “Notification procedure” above.

Record Source Categories:

Information originates with DHS and its components, court subpoenas, law enforcement agencies, other federal, state, and local courts, state bar licensing agencies, state bar grievance agencies, and inquiries and/or complaints from witnesses or members of the general public.

Exemptions claimed for the system:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (e)(12); (f); (g)(1); and (h) of the Privacy Act pursuant to 5 U.S.C. § 552a(j)(2). In addition, the Secretary of Homeland Security has exempted this system from subsections (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. § 552a(k)(1), (k)(2), (k)(3), and (k)(5).

Dated: October 26, 2011

[Original signed copy on file with the DHS Privacy Office]

Mary Ellen Callahan,
Chief Privacy Officer,
Department of Homeland Security.

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